

GENERAL TERMS AND CONDITIONS AND RIDERS

Front page of STD. 2 Form will be attached upon execution of this Contract.

Table of Contents

1. TERMS OF THE CONTRACT	6
2. AMENDMENTS	6
3. DEFINITIONS.....	6
4. PERFORMANCE BOND	11
5. SITE PREPARATION.....	11
6. INSTALLATION AND DELIVERY DATES	11
7. LIQUIDATED DAMAGES	12
8. ACCEPTANCE OF DELIVERABLES	13
9. NOTICE	13
10. COMPENSATION	14
11. STOP WORK FOR NON APPROPRIATION	14
12. MAINTENANCE OF THE CSE SYSTEM	15
13. TRANSPORTATION AND INSTALLATION	15
14. SERVICES.....	15
15. INVOICES AND PAYMENTS	15
16. TAXES	15
17. DOCUMENTATION	16
18. CONFIDENTIALITY OF DATA.....	16
19. BUSINESS PARTNER'S KEY PERSONNEL	17
20. GENERAL INDEMNITY	17
21. PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION.....	18

22.	RISK OF LOSS OR DAMAGE.....	19
23.	RESERVED.....	19
24.	WARRANTY.....	20
25.	RIGHTS AND REMEDIES FOR DEFAULT.....	21
26.	LIMITATION OF LIABILITY	22
27.	DISPUTES.....	23
28.	BUSINESS PARTNER'S POWER AND AUTHORITY.....	24
29.	TITLE TO EQUIPMENT.....	24
30.	FORCE MAJEURE	24
31.	WAIVER OF BREACH.....	24
32.	SEVERABILITY.....	24
33.	ASSIGNMENT	25
34.	GOVERNING LAW.....	25
35.	LIMITATION OF ACTIONS.....	25
36.	TERMINATION OF CONTRACT	25
37.	ASSIGNMENT OF ANTITRUST ACTIONS	26
38.	COVENANT AGAINST GRATUITIES	27
39.	NATIONAL LABOR RELATIONS BOARD CERTIFICATION.....	27
40.	STATEMENT OF COMPLIANCE.....	27
41.	EXAMINATION AND AUDIT	27
42.	INDEPENDENCE OF PARTIES	28
43.	PRIORITY HIRING CONSIDERATIONS	28

44. DRUG-FREE WORKPLACE CERTIFICATION	28
45. ORDER OF PRECEDENCE	29
46. FORCED, CONVICT, AND INDENTURED LABOR	29
47. CHILD SUPPORT COMPLIANCE ACT	30
48. NONDISCRIMINATION CLAUSE.....	30
49. AMERICANS WITH DISABILITIES ACT	31
50. CONFLICT OF INTEREST	31
51. FEDERAL FUNDING PROVISIONS.....	31
52. ATTORNEY’S FEES AND COSTS	32
53. AMBIGUITIES NOT HELD AGAINST DRAFTER	32
54. DISABLED VETERAN PARTICIPATION GOAL	32
55. PUBLICITY.....	32
56. BUSINESS PARTNER EVALUATION	32
57. GIFT AND POLITICAL CONTRIBUTIONS DISCLOSURE	33
58. RIGHTS IN DATA.....	33
59. INSURANCE REQUIREMENTS	34
60. CUMULATIVE REMEDIES	34
61. BINDING EFFECT	34
62. SERVICES OR PROCUREMENT RESULTING FROM CONTRACT	34
63. DUE ORGANIZATIONS	35
64. UNION ORGANIZING.....	35
65. RECYCLING	35

66. TIME IS OF THE ESSENCE	35
67. CHANGES IN EQUIPMENT AND SOFTWARE.....	36
68. EQUAL EMPLOYMENT OPPORTUNITY	36
69. COPELAND “ANTI-KICKBACK” ACT.....	36
70. DAVIS-BACON ACT	36
71. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	36
72. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.....	36
73. ENERGY POLICY AND CONSERVATION ACT	36

1. Terms of the Contract

The term of this Contract shall be as stated on the face of the Standard Agreement Form 213, subject to the availability of funds, unless earlier terminated in accordance with the termination provisions contained in Paragraph 36 of this Contract, or unless extended consistent with the provisions of Rider D of this Contract. The maximum amount of this Contract shall not exceed that amount stated on the face of the State's Standard Agreement Form 213, payable solely from funds appropriated for the purpose of this Contract. This amount may be changed during the term of this Contract only by amendment to this Contract. This Contract is effective after signing by the Business Partner and the contracting State agency, on the date of its last approval or certification of exemption from approval by, or on behalf, of the Director of Finance and the Director of General Services. This Contract is also subject to the approval of the federal Office of Child Support Enforcement within the Administration for Children and Families.

2. Amendments

This Contract may be amended by mutual written agreement of the parties. No alteration or variation of the terms of this Contract shall be valid unless made in writing, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

3. Definitions

<u>Accept and Acceptance</u>	See Rider I, Section 1.2 Definitions.
<u>Acceptance Criteria</u>	See Rider I, Section 1.2 Definitions.
<u>Acceptance Deliverable</u>	See Rider I, Section 1.2 Definitions.
<u>Acceptance Notice</u>	See Rider I, Section 1.2 Definitions.
<u>Acceptance Process</u>	See Rider I, Section 1.2 Definitions.
<u>Base Contract Amount</u>	\$801,202,166.00. This amount does not include the \$50,000.00 for the State's portion of the performance bond as described in Paragraph 4 of these General Terms and Conditions.
<u>Business Requirements List (BRL)</u>	The list of business requirements for the CSE System attached as Attachment G1, Part 2, and as amended from time to time.
<u>Business Solution Response (BSR)</u>	The Business Partner's response to the Business Solution DID, attached as Attachment G1, Part 1, including Appendices A-B.

<u>Business Partner</u>	International Business Machines Corporation (IBM).
<u>Business Problems</u>	The five key strategic problems identified by the State that are to be addressed through the CSE Project, specifically (1) Federal Certification; (2) Customer Service; (3) Worker Effectiveness; (4) System Maintainability; and (5) Implementation, all as described in Rider G. Each one of the enumerated Business Problems will be referred to as a "Business Problem" and all enumerated Business Problems are collectively referred to as the "Business Problems."
<u>CSE Project</u>	The information technology effort mandated by California law to procure, develop, implement, and maintain a single statewide automated system as executed by Department of Child Support Services and Franchise Tax Board organizations, limited to the CSE System.. Synonymous with CSE Project.
<u>CSE System</u>	The CSE System refers to the Child Support Enforcement System; the combination of the software, Operating System Software, Equipment, and Services to be supplied by the Business Partner under this Contract and more particularly described in Rider G. Also referred to as CSE System.
<u>Project</u>	The information technology effort mandated by California law to procure, develop, implement, and maintain a single statewide automated system as executed by Department of Child Support Services and Franchise Tax Board organizations, consisting of the CCSAS CSE Project and the SDU Project.
<u>SDU Project</u>	The information technology effort mandated by California law to procure, develop, implement, and maintain a single statewide automated system as executed by Department of Child Support Services and Franchise Tax Board organizations, limited to the SDU project.
<u>Project staff</u>	The State staff and consultants performing the State's responsibilities on the Project.
<u>CDL Item</u>	The deliverables to be delivered by the Business Partner under this Contract, developed as required by the applicable SOW and meeting the requirements of the applicable CDL Item Description. All CDL Items are listed in Rider G.
<u>CDL Item Description</u>	A description that sets forth the requirements for format, content, dates of submission, acceptance level and acceptance period for each CDL Item. The CDL Item Descriptions consist of (i) Project Management CDL Item Descriptions, attached as Attachment G2, Part 3, and (ii) Technical Management CDL Item Descriptions, attached as Attachment G3, Part 3.
<u>Change Request</u>	The process as described in Rider G for initiating, evaluating,

<u>Management</u>	and disposing of requested changes.
<u>Closure Document</u>	See Rider D, Section 2, Definitions.
<u>Commercial Off the Shelf Software or COTS</u>	Software, whether proprietary to the Business Partner, a Business Partner subcontractor or a third party, that is to be installed without custom development work in essentially its “as is” condition. COTS Software to be delivered by Business Partner to State under this Contract is more particularly described on Rider C, as amended through the Change Request Management process.
<u>Compensation</u>	See Rider D, Section 2, Compensation Definitions.
<u>Compensation Milestone</u>	See Rider D, Section 2, Compensation Definitions. .
<u>Compensation Stream</u>	See Rider D, Section 2, Compensation Definitions. .
<u>Conditional Acceptance</u>	See Rider I, Section 1.6, The State’s Acceptance Options.
<u>Contract</u>	The terms and conditions contained herein and Riders A through J and their attachments specifically referenced herein. Contract Number C0220950.
<u>Corrective Action Plan</u>	A mutually agreed to plan to address Deficiencies associated with Acceptance Deliverables, prepared and approved in accordance with Rider I.
<u>CSE System</u>	See CSE System.
<u>CSE Version 1</u>	See Rider G, Section 3, The CSE System High-Level Features and Functionality. Also referred to as CSE System Version 1.
<u>CSE Version 2</u>	See Rider G, Section 3, The CSE System High-Level Features and Functionality. Also referred to as CSE System Version 2.
<u>Customers</u>	Case participants and other interested parties that are served by the Child Support Program.
<u>Cutover</u>	The discrete point when a site transitions from the existing production system to the new production system (CASES or the CSE System).
<u>Deficiency</u>	See Rider I, Section 1.2, Definitions.
<u>Defect</u>	Incidents found to be attributable to problems/errors in the CSE System, or component thereof, or its documentation.
<u>Derivative Work</u>	A work that is based on an underlying work and that would be a copyright infringement if prepared without the authorization of the copyright owner of the underlying work.
<u>Developed Materials</u>	All written technical communications and records originally

prepared by the Business Partner pursuant to this Contract, including papers, reports, charts, and other documentation, but not including Business Partner's administrative communications, drafts and records relating to this Contract.

Developed Works

Deliverables developed in the performance of this Contract in which the State will own all right, title, and interest, consisting of (i) all Acceptance Deliverables other than Infrastructure Deliverables, (ii) all Work Products, (iii) all software developed by or on behalf of the Business Partner meeting applicable Specifications and delivered to State under this Contract, and (iv) all Developed Materials. Developed Works do not include Pre-Existing Materials or Tools.

Equipment

Hardware, its features, conversions, upgrades, elements, cabling or other accessories, or any combination of them, and the documentation provided to install, support, use, and maintain it, as more particularly described on Rider B and as amended through the Change Request Management process.

Full System Implementation

The point in time in which the last CSE Version 2 cutover occurs and all functionality is present and In-production Use statewide.

Hardware

Physical devices used to process, store, or transmit computer programs or data.

In-production Use

See Rider D, Section 2, Compensation Definitions

Local Child Support Agency (LCSA)

A county office or department that has entered into a cooperative agreement with the Department of Child Support Services to secure child/spousal support, medical support, and to determine paternity.

Management Performance

See Rider D, Section 2, Compensation Definitions.

Operating System Software

Those routines that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Business Partner-supplied programs, and user programs to the Equipment.

Performance Categories

See Rider D, Section 2, Compensation Definitions.

Performance Measure

See Rider D, Section 2, Compensation Definitions.

Phase I

Month 1 through month 32 of the CSE project, based upon the initial Project Schedule

Phase II

Month 33 through month 87 of the CSE project, based upon the initial Project Schedule.

<u>Pre-Existing Materials</u>	Materials, data, information or other intellectual capital developed or acquired prior to or independent of this Contract or any derivatives thereof that were developed outside the scope of this Contract and materials specifically identified as Business Partner or third party owned materials in a Rider.
<u>Production Validation Review</u>	See Rider I, Section 1.2, Definitions.
<u>Program Performance</u>	See Rider D, Section 2, Definitions.
<u>Project Start</u>	The date at which the Contract period of performance begins as set forth in this Contract.
<u>Reject or Rejection Services</u>	See Rider I, Section 1.6, The State's Acceptance Options. Work performed by the Business Partner as described in Rider G.
<u>Solicitation for Conceptual Proposal (SCP)</u>	The Alternative Procurement version of a Request for Proposals provided to qualified businesses issued September 10, 2001, asking for proposals to partner with the Project to design, develop, convert, test, implement, and maintain a solution to the existing problem.
<u>Specifications</u>	See Rider G, Section 1.1.5, Specifications.
<u>Statewide In-production Use of CSE Version 2</u>	All 58 counties and State Auxiliary Systems have been converted to the fully implemented CSE Version 2 and the CSE Version 2 is used for daily operations by authorized Child Support Program users and is available to external customers.
<u>System Performance</u>	See Rider D, Section 2, Compensation Definitions.
<u>Tools</u>	Software that is utilized for development, maintenance or implementation.
<u>Traceability</u>	The degree to which a relationship can be established between two or more products of the development process, especially products having a predecessor, successor, or master-subordinate relationship to one another, for example, the degree to which the requirements and design of a given software component match.
<u>Unconditional Acceptance</u>	See Rider I, Section 1.6, The State's Acceptance Options.
<u>Work Product</u>	All work product (other than CDL Items) to be delivered by the Business Partner under this Contract, developed as required by the applicable SOW. Work Product does not undergo formal Acceptance under Rider I.

4. Performance Bond

The Business Partner shall provide a Performance Bond for the CSE Project as follows:

- a. Commencing at the award of this Contract through Month 9 of the Initial Project Schedule in the amount of \$25,000,000; then
- b. Commencing in Month 10 of the Initial Project Schedule continuing to the CSE Version 1 Operational Readiness Assessment and Review (ORAR) the amount of \$50,000,000; and
- c. Upon commencement of CSE Version 1 Operational Readiness Assessment and Review (ORAR) continuing through and including the CSE Version 2 Production Validation Review in the amount of \$100,000,000.

The cost of the Performance Bond for the period of time described in section (a) above shall be borne by the State outside of the Base Contract Amount. The Business Partner shall forward the surety's invoice in the manner set forth in Paragraph 9 of this contract for this portion of the Performance Bond not to exceed \$50,000.

The State reserves the right to reject any Performance Bond that it deems in conflict with these terms or it deems insufficient to adequately protect the State's interests. A certified copy of the Performance Bond shall be provided to State before signing of this Contract.

5. Site Preparation

- a. The State shall cause the site to be prepared in accordance with the Business Partner's and/or the State's mutually agreed upon written minimum site and environmental specifications.
- b. Any subsequent alterations or modifications to the site which are directly attributable to incomplete or erroneous specifications relating to site requirements provided by the Business Partner and which involve additional expense shall be made at the expense of the Business Partner, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided.

6. Installation and Delivery Dates

- a. Equipment (including Operating System Software)
 - 1) Except as otherwise provided, the Business Partner shall install Equipment listed in Rider B of this Contract so that it is ready for use on or before the date listed in Rider G of this Contract or on a mutually agreed upon revised date. The State will accept or reject the Equipment according to the process more particularly

described in Rider I of this Contract and the Hardware/Software Installation Plan CDL TM 067.

b. Software (other than Operating System Software)

- 1) The Business Partner shall provide those software products listed on Rider C of this Contract, on or before the delivery dates specified in Rider G of this Contract. The Business Partner will install software listed on Rider C of this Contract, on or before the dates specified in Rider G (Hardware/Software Installation Plan CDL TM 067) of this Contract. The State will accept or reject the software pursuant to the process more particularly described in Rider I of this Contract.

7. Liquidated Damages

- a. The parties agree that delays or failures by Business Partner to timely perform its obligations hereunder may interfere with the implementation of CSE Version 2, which will result in loss and damage to the State. The parties further agree that the amount of damage which will be sustained by the State from such delay are uncertain and difficult to ascertain at the time of execution of this Contract with any degree of certainty. Business Partner and the State specifically acknowledge that Business Partner may, at the State's discretion, be required to pay the amounts described in this Paragraph 7 as liquidated damages which are a reasonable measure of the State's damages for the delay in achieving Statewide In-Production Use of CSE Version 2 and not as a penalty, payable only under the conditions set forth in this Section 7. Any payments by the Business Partner under this Section 7 represent the parties' reasonable estimate of the State's actual damages attributable to such delay under the circumstances described in this Section 7.
- b. If Statewide In-Production Use of CSE Version 2 has not been achieved by the date specified in the approved Project Schedule, the State may initiate the process for assessing liquidated damages against Business Partner by providing Notice as set forth in Paragraph 9 of this Contract to the Business Partner of the State's intent to impose liquidated damages.
- c. Commencing on a date which is one hundred and twenty (120) state business days after the date on which the approved Project Schedule requires that Statewide In-Production Use of CSE Version 2 be achieved (the "Grace Period"), the Business Partner shall pay as liquidated damages an amount equal to twenty thousand dollars (\$20,000) a day for each state business day after the expiration of the Grace Period (subject to adjustment under subparagraph (d) below) and continuing for a period expiring on the earlier to occur of (i) one hundred twenty (120) state business days, or (ii) the date on which Statewide In-production Use of CSE Version 2 is achieved.
- d. The Grace Period shall be extended one day for each day of delay that occurs due to causes beyond the control of the Business Partner, including delay caused by the State's failure to meet its obligations under this Contract in a timely fashion or by the

State or any LCSA failure to provide the Business Partner access to resources necessary for the Business Partner to complete its performance on time.

- e. The State's assessment of liquidated damages shall be the State's sole and exclusive remedy with respect to Business Partner's failure to deliver CSE Version 2 In-Production Use. Notwithstanding the foregoing, (i) the State and Business Partner shall be entitled to exercise their rights as provided in Rider D of this Contract and (ii) this liquidated damages remedy does not restrict the State's remedies for damages caused for any reason other than Business Partner's failure to timely delivery CSE Version 2 for Statewide In-production Use as described in this Paragraph 7. The limitation of liability of the parties is more particularly described in Paragraph 26 of this Contract.
- f. Amounts due the State as liquidated damages may be deducted by the State from any sums payable to the Business Partner.

8. Acceptance of Deliverables

The Acceptance Deliverables subject to Acceptance and the Acceptance Process are set forth in Rider I of this Contract.

9. Notice

All notices or demands required or permitted to be given or made under this Contract shall be in writing and addressed to the parties as follows:

If to the State:

Franchise Tax Board
California Child Support Automation
System Project
Attn: Project Director
P.O. Box 1907, MS M-1
Rancho Cordova, CA 95741-1907

If to the Business Partner:

IBM Corporation
3831 North Freeway Blvd., Suite 100
Sacramento, CA 95834
Facsimile: 916.567.2122
Telephone 916.567.2922
E-mail: dinardoe@us.ibm.com

Notice shall be effective in any of the following manners:

- 1) Upon delivery by hand with a signed receipt;
- 2) Upon delivery by first-class certified mail, return receipt requested with prepaid postage; or
- 3) Upon transmission by facsimile or electronic mail, so long as twenty-four (24) hour notice is given pursuant to subsection 1) or 2), above.

Addresses may be changed by either party giving thirty (30) calendar days prior written notice thereof to the other party.

10. Compensation

- a. The Business Partner shall be compensated pursuant to the provisions of Rider D of this Contract.

11. Stop Work for Non Appropriation

- a. In the event of a federal or state non appropriation of project funds for a subsequent fiscal year or reduction of such previously appropriated funds under this Contract requiring the stoppage of work under this Contract, the parties will meet and confer to explore all alternatives and exhaust all reasonable efforts to avoid such work stoppage before the State may issue a written stop work order to the Business Partner, requiring the Business Partner to stop all, or any part, of such work. Unless otherwise agreed, in no event shall such written stop work order exceed a period of thirty (30) calendar days after the stop work order is delivered to the Business Partner. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Business Partner shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of the costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of up to thirty (30) calendar days after a stop work order is delivered to the Business Partner, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - 1) Cancel the stop work order; or
 - 2) Terminate the work covered by the stop work order as provided for in Paragraph 36 of this Contract.
- b. If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Business Partner shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - 1) The stop work order results in an increase in the time required for, or in the Business Partner's cost properly allocable to the performance of any part of this Contract; and
 - 2) The Business Partner asserts its right to an equitable adjustment within thirty (30) calendar days after the end of the period of work stoppage. Thereafter the Business Partner shall have ninety (90) calendar days to submit to the State its proposed equitable adjustment and any supporting documentation. If the Business Partner fails to meet the timelines set forth above and if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any

time before final payment under this Contract. The State will respond to the proposed equitable adjustment within a reasonable period of time.

- c. If a stop work order is not canceled and the Contract is terminated in accordance with paragraph 36 of this Contract, the State shall compensate Business Partner according to the provisions of Paragraph 36 of this Contract.

12. Maintenance of the CSE System

Maintenance will be governed by the terms set forth in Rider G of this Contract.

13. Transportation and Installation

The cost of transportation and installation for the Equipment and Software contained in Riders B and C of this Contract are included in the price for such Equipment and Software.

14. Services

The Business Partner agrees to provide Services as more particularly described in Rider G of this Contract.

15. Invoices and Payments

- a. The Business Partner shall render itemized invoices in triplicate via US mail to:
One duplicate copy to:

Franchise Tax Board
Fiscal Accounting Office
Attn: Senior Accounting Office
Supervisor
P.O. Box 2800
Sacramento, CA 95812-2000

Franchise Tax Board
California Child Support Automation
System Project
Attn: Contract Administration
P.O. Box 1907, MS M-1
Rancho Cordova, CA 95741-1907

- b. The State shall make payment in accordance with the California Prompt Payment Act Government Code Section 927 et seq.

16. Taxes

The State of California is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on the Business Partner or on any taxes levied on employee wages. The State will only pay for any State or local sales or use taxes on the services rendered or Equipment or Software supplied to the State pursuant to this Contract.

17. Documentation

In addition to documentation required by Rider G under this Contract, the Business Partner agrees to provide to the State a reasonable number of all proprietary manuals and other printed materials, and updated versions thereof that exist at the time of delivery, which are necessary or useful to the State in its use of the CSE System. The Business Partner agrees that the State may reproduce such documentation for such use. The State agrees to include the Business Partner's copyright notice on any such documentation reproduced, in accordance with copyright instructions to be provided by the Business Partner. In addition, the Business Partner will pass through to the State any documentation, and any rights concerning such documentation, that accompany the Equipment, COTS and Tools as applicable.

18. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to either party's operation and which are labeled or designated from and after the time of such designation as confidential ("Confidential Information") by that party (the "Disclosing Party") and made available to the other party (the "Receiving Party") in order to carry out this Contract, or which become available to the Receiving Party in carrying out this Contract, shall be protected by the Receiving Party from unauthorized use and disclosure. The Receiving Party shall afford the Disclosing Party's Confidential Information at least the same level of protection against unauthorized disclosure or use as the Receiving Party normally uses to protect its own Confidential Information of a similar character, but in no event less than reasonable care. The Receiving Party shall not be required under the provisions of this paragraph to keep confidential any Confidential Information which is or becomes publicly available without breach of this Contract, is already rightfully in the Receiving Party's possession without obligations of confidentiality, is independently developed by the Receiving Party outside the scope of this Contract, or is rightfully obtained from third parties without obligations of confidentiality. All Confidential Information exchanged hereunder shall be subject to the obligations of confidentiality set forth in this paragraph 18 of this Contract for a period of ten (10) years following expiration of this Contract, or for such longer period as may be required by law, provided that any personal information (e.g. name, social security number, telephone number, address and similar personal identification information) relating to any person shall be treated as confidential in perpetuity.

Any data or information that the State identifies from and after the time of such designation to the Business Partner to be Confidential Information will be treated as confidential. Any employee, agent or representative of the Business Partner whose duties require access to such Confidential Information, or to any Equipment or device which contains such Confidential Information, will first sign a Confidentiality Statement (See FTB Form 7904) as presented in FTB General Procedure Manual, Section 7000 prior to performance of any work) or shall be informed of the existence of these confidentiality provisions and of their duty to comply with the provisions.

19. Business Partner's Key Personnel

- a. Rider J of this Contract contains a listing of the Key Personnel who will exercise a significant administrative, policy, or consulting role on the CSE Project. These personnel shall be referred to both collectively and individually as "Key Personnel."
- b. The Business Partner will designate a Project Manager who will be authorized to act for the Business Partner in direction of daily CSE project operation. The Business Partner's Project manager shall be assigned full time to the operation of the CSE project. Any substitution or replacement for the Business Partner's CSE Project Manager throughout the contract period of performance shall be subject to the approval of the State.
- c. The State reserves the right to approve all assignments of Business Partner's Key Personnel including but not limited to the reassignment or transfer of such Key Personnel prior to the completion of such Key Personnel's role on the CSE Project. Key Personnel positions subject to the limitations of this paragraph are listed in Rider J of this Contract. Business Partner will maintain the designated Key Personnel throughout the duration of the project, or seek State approval before reassignment, unless any individual designated as Key Personnel:
 - 1) voluntarily resigns from Business Partner or Business Partner's subcontractor;
 - 2) is dismissed by Business Partner or Business Partner's subcontractor for misconduct (e.g., fraud, drug abuse, theft);
 - 3) fails, in Business Partner's sole and absolute discretion, to perform his or her duties and responsibilities pursuant to this Contract; or
 - 4) is unable to work.
- d. The State reserves the right to investigate the personal history of all of the Business Partner's personnel who may have access to state or federal taxpayer or child support information. The State may require such personnel to complete a personal history questionnaire and be fingerprinted. Fingerprints will be sent to the California Department of Justice for information regarding prior criminal history. If the Business Partner currently performs a personal history investigation on its personnel, the State may at its discretion, accept that information in lieu of the personnel being required to complete the State's personal history questionnaire and being fingerprinted.

20. General Indemnity

To the extent caused by the Business Partner's acts or omissions constituting negligence or willful misconduct in the performance of this Contract, Business Partner agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims and losses excluding consequential damages, accruing or

resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract, and from any and all third party claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged, excluding consequential damages, in the performance of this Contract.

Such indemnification obligation shall be conditioned on the following:

- a. that the Business Partner shall be notified in writing by the State within a reasonable time of any notice of such claim; and
- b. that the Business Partner shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, including choice of attorneys; provided however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense; and
- c. that the State shall provide information and other reasonable cooperation and assistance to the Business Partner in defending or settling the action.

21. Patent, Copyright, and Trade Secret Protection

- a. The Business Partner, at its own expense, shall defend any third party action brought against the State to the extent that such action is based upon a claim that the then-current version of the Business Partner's software or Developed Works infringes a United States patent or copyright or violates a trade secret. The Business Partner shall pay those costs and damages finally awarded in any such action. Such defense and payment shall be conditioned on the following:
 - 1) That the Business Partner shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - 2) That the Business Partner shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, including the choice of attorneys; provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense, and;
 - 3) That the State shall provide information and other reasonable cooperation and assistance to the Business Partner in defending or settling the action.

With Respect to software and Equipment manufactured by third parties, Business Partner shall pass through to the State the indemnity for infringement of a United States patent or copyright or violation of a trade secret provided by such manufacturer to the fullest extent permitted.

- b. Should the Business Partner's software or Developed Works, or the operation thereof, become, or in the Business Partner's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright, or a trade secret, the State shall permit the Business Partner at the Business Partner's expense either to (1) procure for the State the right to continue using the Business Partner's software or Developed Works, or (2) to replace or modify the same so that it becomes non-infringing. If neither of these options can reasonably be taken, or if the use of such Business Partner's software or Developed Works by the State shall be prevented by injunction, the Business Partner agrees to take back such Business Partner's software or Developed Works, and refund any sums the State has paid the Business Partner for such Business Partner's software and Developed Works and make reasonable efforts to assist the State in procuring substitute software. If, in the sole opinion of the State, the return of such infringing Business Partner's software or Developed Works makes the use of all of the Business Partner's software or Developed Works impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge.
- c. The Business Partner shall have no liability to the State under any provision of this Paragraph 21 of this Contract with respect to any claim of patent, copyright, or trade secret infringement that is based upon:
 - 1) The combination or utilization of Business Partner's software or Developed Works, COTS and/or Equipment furnished hereunder with machines or devices not made or furnished by the Business Partner.
 - 2) The modification by the State of the Business Partner's software or Developed Works, COTS and/or Equipment.
 - 3) The combination or utilization of Business Partner's software or Developed Works furnished hereunder with non-Business Partner supplied software.
- d. The foregoing states the entire liability of the Business Partner with respect to infringement of patents, copyrights and trade secrets.

22. Risk of Loss or Damage

The Business Partner shall be relieved from all risks of loss or damage to the Equipment, Software, and Operating System Software, provided under this Contract upon each item's respective delivery as specified in Paragraph 6 of this Contract, except when such loss or damage is due to the negligence of the Business Partner.

23. Reserved

24. Warranty

- a. For the time period beginning upon Acceptance of the applicable Acceptance Deliverable as defined in Rider I of this Contract and continuing until forty-five (45) state business days after such Acceptance, the Business Partner warrants that the applicable Acceptance Deliverable as described in Rider I of this Contract, excluding Infrastructure Deliverables will substantially conform to their applicable Specifications as described in Rider G, section 1.1.5 of this Contract. With respect to certain Infrastructure Deliverables, the warranty applicable to the Equipment as described in Rider B and the COTS described in Rider C will be set forth in the license agreements governing the Software and/or the documentation shipped with the Equipment, as applicable.
- b. If State believes there has been a breach of this warranty and so notifies Business Partner in writing stating in reasonable detail the nature of the alleged breach within forty-five (45) state business days after the applicable Acceptance Deliverable is Accepted by the State, the Business Partner will promptly investigate the matter to determine the nature of the alleged breach of warranty. If there has been a breach of this warranty, the Business Partner's sole obligation for breach of warranty will be for the Business Partner (i) to correct the Deficiency in the Acceptance Deliverable, as necessary, to cause it to comply with this warranty; and (ii) with respect to Equipment and COTS, to exercise all rights and remedies available under the applicable vendor warranty to ensure that the affected Equipment or COTS is repaired or replaced.
- c. There will be no additional charge to the State for the investigation and correction efforts performed by Business Partner pursuant to subparagraph (b) of this Paragraph 24.
- d. If Business Partner is unable to correct a breach of this warranty after repeated efforts, the State will be entitled to receive an equitable adjustment in the Business Partner charges for the Acceptance Deliverable in question to reflect any reduction in the value of the Acceptance Deliverable as a result of the uncorrected breach of warranty or, if the breach of this provision amounts to a material breach of the Contract, State may elect to terminate the Contract pursuant to Paragraph 25 of this Contract.
- e. **EXCEPT AS PROVIDED IN THIS PARAGRAPH 24, AND PARAGRAPHS 28 (BUSINESS PARTNER'S POWER AND AUTHORITY) AND 38 (COVENANT AGAINST GRATUITIES) OF THIS CONTRACT, THE BUSINESS PARTNER DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

25. Rights and Remedies for Default

- a. The State or the Business Partner (the Nonbreaching Party) may elect to terminate this Contract because of a material breach of this Contract by the other (the Breaching Party) by following the process set forth in this Section.
- b. The Nonbreaching Party will provide the Breaching Party with written notice, describing in reasonable detail the nature of the material breach, and will provide the Breaching Party with the opportunity to cure the material breach as follows:
 - 1) in the event of any material breach by the Business Partner based upon the failure to correct a Deficiency of an Acceptance Deliverable as described in Rider I in this Contract , forty-five (45) calendar days after receipt of such written notice; or (ii) based upon any other material breach of this Contract, forty-five (45) calendar days after receipt of such written notice, unless such material breach can not be cured in such a time-frame, then such time-frame as contained in an approved cure plan described in subsection (iii) below;
 - 2) In the event of any material breach by the State, forty-five (45) calendar days after receipt of such written notice of material breach, unless such material breach can not be cured in such a time-frame, then such time-frame as contained in an approved cure plan described in subsection (iii) below;
 - 3) If the material breach by either party is of a nature that it can not reasonably be cured in such a time-frame, then the Breaching Party shall, within five (5) business days from delivery of notice of breach, deliver a proposed cure plan and the Non Breaching Party will have five (5) state business days within which to accept or reject such proposed cure plan. Upon acceptance by the Non Breaching Party of such cure plan, the time frames referenced in such cure plan shall govern. If the Non Breaching Party does not accept the cure plan, then the Breaching Party will have an additional ten (10) state business days to cure.

If the material breach is not cured during the applicable cure period set forth above, the Nonbreaching Party may terminate this Contract for material breach by providing the Breaching Party with written notice within sixty (60) calendar days after the expiration of the cure period specified above, declaring termination of this Contract for material breach under this Section, effective on the date stated in such notice. Such effective date will be no later than 60 calendar days after the Breaching Party's receipt of such notice of termination for material breach.

- c. In the event of the termination of this Contract either in whole or in part, by reason of the default or breach thereof by the Business Partner, any loss or damage sustained by the State in procuring any Equipment, Software, Operating Systems Software, or service which the Business Partner therein agreed to supply shall be borne and paid for by the Business Partner., subject to the provisions of Paragraph 26 (Limitation of Liability) of this Contract.

- d. The rights and remedies of the State and the Business Partner provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

26. Limitation of Liability

- a. The State's liability for damages to the Business Partner for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited in the aggregate for all claims to ten percent of the cumulative total of all amounts invoiced by the Business Partner prior to the date on which the event or omission giving rise to the cause of action occurred; provided however that in the case of breach of contract by the State for nonpayment as set forth in Rider E, section 2(A)(1) of this Contract, the State's limit of liability shall be the total amount due at the time of nonpayment.
- b. The Business Partner's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including negligence, shall be limited in the aggregate for all claims to an amount equal to the greater of 1) \$25,000,000, or 2) the cumulative total of all amounts invoiced by the Business Partner in the eighteen (18) month period immediately prior to the date on which the event or omission giving rise to the cause of action occurred, provided that:
 - 1) Upon commencement of the Statewide In-Production Use of CSE Version 2 as defined in this Contract, Business Partner's liability for such damages shall be limited to the cumulative total of all amounts invoiced by the Business Partner in the twelve (12) month period immediately prior to the date on which the event or omission giving rise to the cause of action occurred.
- c. In addition, the State's ability to exercise its rights under the Performance Bond provided under this Contract shall not prevent the State from seeking damages in accordance with the limitation on such damages as provided for under subparagraph (b) of this Paragraph. Notwithstanding the State's rights pursuant to such Performance Bond, in no regards will the Business Partner's total liability for damages under this Contract exceed the limits set forth in subparagraph (b), above.
- d. The foregoing limitations of liability in subparagraphs (a) and (b) above shall not apply to; (i) the costs and damage awards referred to in Paragraph 21 of this Contract entitled "Patent, Copyright and Trade Secret Protection", (ii) breach of a party's obligations under paragraph 18 of this Contract, titled "Confidentiality of Data," (iii) claims for bodily injury to persons or damage to real or tangible personal property caused by the State's or Business Partner's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.
- e. In no event will either the State or the Business Partner be liable for special, incidental, indirect or consequential damages (including lost profits, lost data, or penalties) even if

notification has been given as to the possibility of such damages. Subject to the monetary limits described herein, each party's liability hereunder will be limited to direct damages. The State may include in any claim for direct damages the cost of obtaining substitute goods or services of reasonably equivalent capability, function and performance, less the pro rata applicable portion of the Base Contract Amount.

- f. The limitations set out in Paragraph 26.b of this Contract are the maximum for which Business Partner and its subcontractors are collectively responsible.

27. Disputes

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute is not disposed of within a reasonable period of time by the Business Partner and State employees normally responsible for the administration of this Contract, it shall be referred for resolution to the following individuals in the order listed below:
 - 1) The Project Managers for the State and the Business Partner's Deputy Project Manager. If within five (5) state business days the dispute is not resolved then the dispute shall be referred to:
 - 2) The Project Director, the DCSS Project Leader, and the Business Partner's Project Executive. If within five (5) state business days the dispute is not resolved then the dispute shall be referred to:
 - 3) The Executive Officer of the Franchise Tax Board or his designee, and the Business Partner's Vice President for State and Local Government for joint resolution

If the dispute has not been resolved by the Executive Officer of the Franchise Tax Board and the Business Partner's Vice President for State and Local Government after the above described escalation process has been exhausted in a time period not to exceed twenty (20) state business days, then either party may refer the dispute to the Department of General Services Deputy Director, Procurement Division (or designated representative) for joint resolution with the Business Partner. The referring party's written request shall be fully supported by factual information, and if such request involves a cost adjustment to the Contract, such party shall include with the request a written statement signed by a senior official indicating that the request is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which such party believes the other party is liable.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, each party agrees to proceed diligently with the performance of those provisions of the Contract that are not affected by the dispute, including the provision of

services and the Acceptance Deliverables contained in Rider I, in accordance with the terms of the Contract.

- c. Any final decision of the State shall be expressly identified as such, shall be in writing and shall be signed by the Department Director or designee or Deputy Director, Procurement Division. The State's final decision is the "final resolution" described in paragraph (b) above, and shall be conclusive and binding regarding the dispute unless Business Partner rejects the decision within ninety (90) calendar days of its issuance and notifies the State in writing within such ninety (90) calendar days. Thereafter, Business Partner may not bring any formal proceedings with respect to the dispute unless it does so within the time period set forth in paragraph 35 of this Contract.

28. Business Partner's Power and Authority

The Business Partner warrants that it has full power and authority to grant the rights herein granted and will hold the State hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Business Partner avers that it will not enter into any arrangement with any third party that might abridge any rights of the State under this Contract.

29. Title to Equipment

The State will take title to the Equipment when the CSE System is transitioned to the State as more particularly described in the Business Process Transition Plan, CDL TM 056.

30. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to: acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, and power failure.

31. Waiver of Breach

No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or subsequent breach, except as may be expressly provided in the waiver or consent.

32. Severability

The provisions of this Contract shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. In addition, if any provision of this Contract, for any reason, is declared to be unenforceable,

the parties shall substitute an enforceable provision that, to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

33. Assignment

This Contract shall not be assignable in whole or in part.

34. Governing Law

This Contract shall be governed, administered, construed and enforced in accordance with the laws of the State of California. Venue of any action brought with regard to this Contract shall be in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

35. Limitation of Actions

No action, regardless of form, arising out of this Contract may be brought by either party more than two years after the cause of action has arisen, or in the case of nonpayment, more than two years from the date of the last payment, except where either party (within two years after a cause of action has arisen) provides the other party in writing a notice of a potential cause of action, disclosing all material facts then known by the notifying party concerning such cause of action, then the notifying party may bring an action based on the matter so disclosed at any time prior to the expiration of four years from the time the cause of action arose.

36. Termination of Contract

- a. Upon termination or other expiration of this Contract, each party will assist the other party in the orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party.
- b. This Contract may be terminated for the convenience of both parties by mutual consent. In the event of such mutual termination, each party will absorb its own costs and pay no damages to the other.
- c. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, and the State provides a Notice pursuant to Paragraph 9 of this Contract that the Contract is terminated, the Business Partner agrees to take back any Equipment and software furnished under this Contract for which it has not yet been

compensated by the State, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation, subject to the provisions of Paragraph 36e of this Contract.

- d. If funds necessary to provide for continued performance are reduced, but remain sufficient to proceed with portions of the effect as described in Rider G of this Contract, the parties shall meet and confer on a mutually agreeable restructuring of the Contract.
- e. The State agrees that if the provisions of Paragraphs 36c above are invoked, the State shall either:
 - 1) pay the Business Partner for all such installed and accepted Equipment and software listed on Riders B and C of this Contract at the prices stated in accordance with this Contract, or
 - 2) return all such Equipment and Software and pay the Business Partner an amount equal to the difference between the purchase prices contained in this Contract for the returned items, and their aggregate fair market value as of the date of return.

The State also agrees to compensate the Business Partner for services rendered up to and until the date services were terminated, in addition to reasonable costs of demobilization (wind-down). The Business Partner understands that any payment would come only from legally available funds.

- f. Nothing in Paragraph 36 of this Contract shall be deemed to waive the State's right to terminate this Contract under the provisions of Paragraph 25 of this Contract, "Rights and Remedies of State for Default."

37. Assignment of Antitrust Actions

The following provision of Government Code Section 4552, 4553, and 4554 (Statutes of 1978, Ch. 414) shall be applicable to the Business Partner.

"In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. sec. 15) or under the Cartwright Act [Chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code], arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder."

"If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble

damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery."

"Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action."

38. Covenant Against Gratuities

The Business Partner warrants by signing hereon that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Business Partner or any agent or representative of the Business Partner, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Business Partner agreed to supply shall be borne and paid for by the Business Partner. The rights and remedies of the State provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

39. National Labor Relations Board Certification

By signing hereon the Business Partner swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Business Partner within the immediately preceding two-year period because of the Business Partner's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with Public Contract Code Section 10296.

40. Statement of Compliance

The Business Partner's signature affixed hereon and dated shall constitute a certification under the penalty of perjury under the laws of the State of California that the Business Partner has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

41. Examination and Audit

The contracting parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Contract in accordance with Government Code Section 8546.7. The examination and audit shall be confined to those

matters connected with the performance of the Contract, including, but not limited to, the costs of administering the Contract.

The Business Partner shall grant access to the State and Federal Government or any of their duly authorized representatives to any books, documents, papers, and records of the Business Partner which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts pursuant to applicable federal regulations. The Business Partner shall maintain records that support invoices submitted to the State for payment. The Business Partner shall preserve invoice records for a period of three (3) years from the submission of the final invoice or date of contract termination or close of audit, whichever is longer.

42. Independence of Parties

The Business Partner, and the agents and employees of Business Partner, in performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of State of California.

43. Priority Hiring Considerations

The Business Partner is required to give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200. (See Public Contract Code Section 10353)

44. Drug-Free Workplace Certification

By signing this Contract, the Business Partner hereby certifies under penalty of perjury under the laws of the State of California that the Business Partner will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and
 - 4) penalties that may be imposed upon employees for drug abuse violations.

- c. Provide, as required by Government Code Section 8355(c), that every employee who works on this Contract:

- 1) will receive a copy of the company's drug-free policy statement; and,
- 2) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both and the Business Partner may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: 1) the Business Partner has made false certification, or 2) the Business Partner violates the certification by failing to carry out the requirements as noted above.

45. Order of Precedence

- a. This Contract contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof, and any prior correspondence, memoranda, or contracts with respect thereto are replaced in total by this Contract.
- b. In the event there are any inconsistencies or ambiguities among the terms of this Contract and incorporated documents, the following order of precedence shall be used.
 - 1) written amendments to the Riders
 - 2) Riders A through J of this Contract
 - 3) Written amendments to the Contract terms and conditions, excluding the Riders
 - 4) Contract terms and conditions excluding the Riders.
 - 5) Agreements with respect to Pre-existing Materials, COTS and Tools.

46. Forced, Convict, and Indentured Labor

- a. By signing this Contract, the Business Partner hereby certifies that no foreign-made Equipment, materials, or supplies furnished to the state pursuant to the Contract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. By signing this Contract the Business Partner agrees to comply with the requirements of California Public Contract Code (PCC) section 6108.
- b. Any Business Partner contracting with the State who knew or should have known that the foreign-made equipment, materials or supplies furnished to the state were produced in whole or part by forced labor, convict labor, or indentured labor under penal sanction,

when entering into this contract, subject to California PCC section 6108, subdivision (c), may have any or all of the following sanctions therein imposed:

- 1) The contract under which the prohibited equipment, materials or supplies were provided may be voided at the option of the state agency to which the equipment, materials or supplies were provided.
- 2) The Business Partner may be assessed a penalty which shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the equipment, materials or supplies that the state agency demonstrates were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction and were supplied to the state agency under the contract.
- 3) The Business Partner may be removed from the California Department of General Services bidder's list for a period not to exceed three hundred and sixty (360) calendar days.

47. Child Support Compliance Act

For any contract in excess of \$100,000, the Business Partner acknowledges in accordance with California Public Contract Code section 7110, that:

- a. The Business Partner recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relation to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and
- b. The Business Partner, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

48. Nondiscrimination Clause

- a. During the performance of this contract, the Business Partner and its subcontractors, will not discriminate against any employee or applicant for employment because of sex, sexual orientation, race color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, or denial of family care leave. Business Partner and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Business Partner and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and applicable regulations of the Fair Employment and Housing Commission implementation Government Code Section 12990 set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated

into this contract by reference and made a part hereof as if set forth in full. Business Partner and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

- b. The Business Partner shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

49. Americans with Disabilities Act

The Business Partner assures the State that it complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) (ADA) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

50. Conflict of Interest

Business Partner shall not directly or indirectly receive any benefit from recommendations made to the Project and shall disclose to the Project any personal investment or economic interest of Business Partner which may be enhanced by the recommendations made to Project. Business Partner acknowledges that the Project is subject to the provisions of the Fair Political Practices law of California (Government Code section 81000, et seq., and all regulations adopted hereunder, including, but not limited to, Title 2, California Code of Regulations, section 18700) and the Business Partner shall comply promptly with any requirement hereunder. If required by law, Business Partner shall require its Key Personnel as defined in Rider J of this Contract and all later substitutions to file Statements of Economic Interests. All such reports shall be filed simultaneously with the Project Director or his designee.

51. Federal Funding Provisions

This Contract is subject to availability of funds approved by the federal Administration for Children and Families. If this Contract overlaps federal fiscal years, the State's monetary obligation under this Contract in subsequent fiscal years is subject to and contingent upon availability of federal funds budgeted for the purpose of this Contract.

It is mutually understood between the parties that this Contract has been written for the mutual benefit of both parties, before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the Contract were executed after that determination was made.

This Contract is subject sufficient funds being made available to the State by the U.S. Department of Health and Human Services for the purpose of this program for the fiscal year(s) covered by the term of this Contract. In addition, this Contract is subject to any additional restriction, limitation, or condition imposed by a federal agency or enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Contract in any manner.

The parties mutually agree that if a federal agency or the Congress does not appropriate sufficient funds for the program, the State shall have the option to terminate the Contract pursuant to the terms of paragraph 36 of this Contract or amend the Contract as may be mutually agreed by the parties to reflect any reductions in funds.

52. Attorney's Fees and Costs

Each party shall be responsible for its own attorney's fees and costs of litigation.

53. Ambiguities Not Held Against Drafter

This Contract having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Contract. Titles or headings are not part of this Contract. They exist for convenience of reference only and shall have no effect on the construction and legal effect on this Contract.

54. Disabled Veteran Participation Goal

- a. The Business Partner agrees that it will meet the requirements of the State of California's policies regarding the 3 percent disabled veteran business enterprise (DVBE) participation goal for state contracts. DVBE is referred to hereafter as a "Targeted Business Enterprise."
- b. The Business Partner, in contracting for goods and services pursuant to this Contract, shall make good faith efforts to comply with the State of California's objectives and then-current policies regarding targeted business enterprises. The Business Partner shall report such efforts and the level of participation by DVBE's to in the format prescribed by CCSAS.
- c. Nothing shall be construed to authorize any Business Partner to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin or ancestry.

55. Publicity

No publicity release or announcement concerning this Contract or the transactions contemplated herein shall be issued by Business Partner without advance written approval by the DCSS Project Leader or his designee.

56. Business Partner Evaluation

Pursuant to Public Contract Code section 10369, State staff shall evaluate Business Partner's performance under the terms and conditions of this Contract within sixty (60) calendar days after the completion of the Business Partner's performance under this Contract. If the Evaluation indicates unsatisfactory performance, a copy will be sent to the

Department of General Services, the Office of Legal Services and the Business Partner who may file a response to the evaluation. The evaluation and response shall remain on file for thirty-six (36) months and shall not be public records.

57. Gift and Political Contributions Disclosure

Business Partner must comply with the Government Code section 20152.5, as it exists and as amended by Legislature and implemented by the Board of Administration from time to time, concerning gift and campaign disclosure policies. The existing code section is stated as follows:

No matter involving any vendor or Business Partner in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, an written disclosure has been submitted by the vendor or Business Partner of any campaign contributions aggregating two hundred fifty dollars \$250 or more and any gifts aggregating fifty dollars (\$50) or more in value that the vendor or Business Partner has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the Business Partner or the vendor.

58. Rights in Data

- a. Developed Materials shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State. The State hereby grants Business Partner an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Developed Materials and the right to authorize others to do any of the former.
- b. Notwithstanding Paragraph 18, of this Contract the ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Business Partner or jointly by the Business Partner and the State can be used by either party in any way it may deem appropriate.
- c. The State shall have all ownership rights in the Developed Works. The State grants the Federal Government a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes in the Developed Works, designed, developed, or installed with Federal financial participation. To the extent Pre-Existing Materials are embedded within the Developed Works, Business Partner hereby grants State: (1) a license to such Pre-Existing Materials as provided in the applicable license in Rider F, or (2) a royalty-free, non exclusive, worldwide and irrevocable license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on such Pre-Existing Materials for the CSE Project and to authorize others to do so for other federally funded Child Support Programs as required by federal law.

- d. If the Contract involves the use of one or more Pre-Existing Materials, the Business Partner will be responsible for promptly providing State with a copy of the license agreement governing those Pre-Existing Materials.
- e. Proprietary operating/vendor software which is provided at established catalog or market prices and sold or leased to the general public (including but not limited to commercial entities), or any derivatives of such software, shall not be subject to the ownership provisions in subparagraph c of this paragraph 58.
- f. This paragraph 58 shall not preclude the Business Partner from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
- g. Notwithstanding anything to the contrary in this Contract, nothing herein shall limit, waive or otherwise impair a party's rights in and to any materials, data, information or other intellectual capital developed or acquired prior to or independent of this Contract or any derivatives thereof ("Pre-Existing Materials").
- h. The State's licenses to certain Pre-Existing Materials, COTS Software and Tools are attached as Rider F or as set forth in Rider C of this Contract.

59. Insurance Requirements

Business Partner warrants that it carries adequate liability, workman's compensation, and other necessary insurance and shall maintain such insurance at levels acceptable to the State in full force and effect during the term of this Contract. Business Partner agrees to furnish satisfactory evidence of this insurance coverage to the State upon request.

60. Cumulative Remedies

Except as provided herein, the rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

61. Binding Effect

This Contract, any instrument or agreement executed pursuant to this Contract, and the rights, covenants, conditions and obligations of Business Partner and the State contained therein, shall be binding upon the parties and their successor, assigns and legal representatives.

62. Services or Procurement Resulting from Contract

Neither the Business Partner, nor any of its subsidiaries, officers or directors, may submit a proposal or be awarded a contract for the provision of services, procurement of goods or

supplies, or any other related action which is required, suggested, or otherwise deemed to be an outgrowth of the advice or recommendations that Business Partner provides under this Contract.

63. Due Organizations

Business Partner is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization.

64. Union Organizing

Business Partners by signing this Contract hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Contract.

- a. Business Partner will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b. No state funds received under this Contract will be used to assist, promote or deter union organizing.
- c. Business Partner will not, for any business conducted under this contract, use any state property to hold meeting with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d. If Business Partner incurs costs, or makes expenditures to assist, promote or deter union organizing, Business Partner will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Business Partner shall provide those records to the Attorney General upon request.

65. Recycling

The Business Partner hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, services provided or used in the performance of this contract meets or exceed the minimum percentage of recycled material as defined Public Contract Code 12161 and 12200.

66. Time is of the Essence

Time is of the essence in this Contract. However, the Business Partner shall not be deemed to be in breach of this provision until the provisions of Paragraph 25b (Default) and 27 (Disputes) of this Contract have been completely exercised. The parties agree that a breach of this provision shall not result in a rescission of this Contract.

67. Changes in Equipment and Software

By mutual agreement of the parties pursuant to the Change Request Management Process as set forth in Rider G of this Contract, additions, deletions, and/or substitutions of Equipment and software may be made, so long as the total aggregate dollar amount does not exceed the amounts stated on Riders B and C of this Contract.

68. Equal Employment Opportunity

The Business Partner must comply with E.O. 11246 "Equal Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" to the extent required by applicable federal law.

69. Copeland "Anti-Kickback" Act

The Business Partner must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) to the extent required by applicable federal law.

70. Davis-Bacon Act

The Business Partner must comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) to the extent required by applicable federal law.

71. Contract Work Hours and Safety Standards Act

The Business Partner must comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) to the extent required by applicable federal law.

72. Clean Air Act and Federal Water Pollution Control Act

The Business Partner must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. et seq. to the extent required by applicable federal law.

73. Energy Policy and Conservation Act

Business Partner must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L.94-163, 89 Stat.871) to the extent required by applicable federal law.